IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2976 OF 2005

All India Service Engineers Association, a trade Union registered under the Trade Unions Act, 1926 representing technical staff (Service Engineers) of Air India Ltd., having its office at 18, Tower Building, Senapati Bapat Marg, Mumbai 400 028. ... Petitioner

Versus

1. Air India Limited, a Company incorporated under the Companies Act having its registered office at Air India Building, Nariman Point, Mumbai 400 021.

2. Union of India, Through Advocate for the Union of India, Ayakar Bhavan, Mahim Divn, Mumbai 400 020. ... Respondents

Mr. J.P. Cama, Sr. Advocate with Ms. Kher i/by Sanjay Udeshi for Petitioner.

Mr. S.K. Talsania,Sr. Advocate with Mr. J. Saluja i/by M/s. M.V. Kini & Co. for R. No. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: NOVEMBER 29, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.)**:**

. Rule. Heard forthwith.

2. The Petitioner is a trade union, registered under the provisions of the Trade Unions Act. By this Petition, amongst the reliefs prayed for are the following:

"(a) That this Hon'ble Court be pleased to

declare that the terms and conditions (of service) of the members of the Petitioner Union are governed by the Settlement dated 31.12.1995 and 5.5.96 as modified on 22.12.2004.

(b) That this Hon'ble Court be pleased to issue an appropriate writ, order or direction to direct the Respondent Company to implement the Settlements dated 31.12.1995 and 5.5.96 as modified on 22.12.04 in respect of the Petitioner's members.

(c) That this Hon'ble Court be pleased to issue a writ, order or direction to restrain the Respondent Corporation from implementing the agreement dated 25.1.2005 as modified on 7.7.2005 in respect of the Petitioner's members.

(d) That this Hon'ble Court be pleased to issue an appropriate writ, order or direction to direct the Respondent Company to negotiate with the Petitioner its balance charter of demands."

2. It is the case of the Petitioner that the

settlement entered into by the Respondent No. 1 with Air India Employees Guild (AIEG) on 25.1.2005 and modified on 7.7.2005 and the subsequent Award in Reference No.CGIT-2/75 of 2003, is not binding on them.

3. An application was moved by the Respondent No. 1 and A.I.E.G. which union is not a party to this petition, to pass a no dispute award in terms of Point b (x) of the settlement dated 25.1.2005. The matter was thereafter adjourned for filing the original settlement. On 31.8.2005, an application was filed that the settlement was signed between the parties to the Reference in January, 2005 and that the Board of Directors of Air India had approved the same on 8.7.2005.

. The learned tribunal thereafter in terms of what was submitted by the parties, in the said reference, passed the following order :

> "Reference stands disposed of as settled vide Settlement dated 25.1.2005 filed with Exh.11."

. It is the further case of the Petitioners that presently there is no recognised union to act as the Sole Collective Bargaining Agent on behalf of the

employees of Respondent No. 1. That issue is pending in the proceedings taken out, for challenging the directions to hold elections by secret ballot. In the meantime, a joint negotiating team was appointed for considering the demands raised by the Unions. Accordingly, a Joint Negotiating team comprising the Members of the Petitioners, A.I.E.G. and Air India Employees Union (A.I.E.U.) was constituted. This was communicated to Respondent No. 1 on 14.12.2004. Negotiations were thereafter held and on 22.12.2004 a broad consensus was arrived at between the parties in respect of pay scale, H.R.A., C.C.A. and other allowances. In respect of the H.R.A. and C.C.A. it was agreed that it would be as per D.P.E. guidelines. Accordingly the respondent Management signed separate settlements with each of the three unions which was required to be incorporated into the M.O.U. Although the recognition of the A.I.E.G. had long expired in March 2004, the settlement of 5.5.1996 continued to govern the service conditions of the Petitioner members, as no fresh settlement had been signed to replace it. The Petitioners on 22.12.2004 addressed a letter to the H.R.D. department of Respondent No. 1 in respect of certain anomalies in the gradation, work practice and allowance chart. On 19.1.2005, the respondent No. 1 addressed a letter to the General Secretary

of Petitioner Union and representative on the Joint Negotiating team, requesting him to meet the General Manager, H.R.D. in connection with the Memorandum of Understanding to be entered into between the Management of Air India and the Joint Negotiating Team with effect from 1.1.1997. The Petitioners were informed by subsequent intimation that the meeting was postponed. Various meetings took place and ultimately on 24.1.2005 the first respondent presented a draft MOU to the Joint Negotiating team. The Petitioners submit that the Respondents backtracked from the consensus arrived at in the matter pertaining to HRA, CCA and other allowances. Various other new terms were proposed which would have an adverse effect on the conditions of service of the Petitioner's members. The negotiating team requested that negotiations be completed. The first respondent was however, adamant. The Petitioners were called upon to sign draft MOU, however, as the Petitioners felt, that it was contrary to the interest of their members, they declined to do so.

4. On 25.1.2005 AIEG signed MOU with the first respondent Management. AIEG it is contended had no authority to sign the said MOU dated 25.1.2005 and the same is ex facie illegal and not binding on the Petitioner's members. The first respondent has also gone back on its representation of signing the MOU

with the Joint Negotiating team. The MOU dated 25.1.2005 is detrimental and contrary to the interests of the Petitioners members, in terms of various allowances. The Petitioner thereafter entered into correspondence with Respondent No. 1 and addressed a letter on 25.1.2005 setting out their grievance. AIEG however, entered into the agreement by signing of MOU /agreement dated 25.1.2005 as being in full and final settlement of their claims. The Petitioners Members have however, declined to give such an undertaking. One thousand of the Petitioners Members declined to accept the amounts under the agreement entered into with A.I.E.G.

. On 7.7.2005 AIEG further agreed with the Management of Respondent No. 1, to reduce certain allowances despite signing of MOU dated 25.1.2005. According to Petitioners, if this is accepted and implemented, the same will result in further loss to its members by approximately 25%. The Petitioners members it is set out has not signed individual undertakings of acceptance of the said MOUs but disbursements under the said MOU dated 7.7.2005 have been directly credited to their bank amounts. They have been accepted "without prejudice and under protest." It is on this background that the Petitioners have approached this court.

5. At the outset, we make it clear that in so far as prayer (d) is concerned, no writ as prayed for can be issued against the Respondent No. 1. If Petitioner seeks to negotiate with Respondent No. 1 for whatever demands they have, it is the mechanism under the Industrial Disputes Act which will have to be followed by taking up the matter first in conciliation, before the Conciliation Officer. It is not open to the writ court when a mechanism is provided under the provisions of the I.D. Act 1947 to grant the direction sought. There is nothing in law like a right to negotiation except under those regulations conferring on a union a right of collective bargaining. It is because of this on failure by the parties to discuss and or settle the demand, the Industrial Dispute Act has provided the mechanism of conciliation. Any Union which therefore, seeks a settlement of their demands, have to follow the regular procedure. A writ can only go if the conciliation officer, refuses to take up the matter in conciliation if prima facie there is an industrial dispute.

6. The next issue is whether reliefs in terms of prayer clauses (a), (b) and (c) can be granted. It is not the case of the Petitioners that a settlement either in terms of Section 2(p) or Section 18 of the

Industrial Disputes Act, has been entered into with the Petitioners or with AIEG or for that matter with AIEU in terms of the MOU dated 25.12.2004. There was no settlement as on 22.12.2004, but an understanding which was subject to acceptance by the Board of Directors of Respondent No. 1. In the eyes of law there is no settlement. No relief therefore can be granted to the Petitioners based on the purported settlement of 22.12.2004. Factually there is no settlement and Exh. G to the Petition at the highest is an understanding between the parties to the negotiations and was subject to ratification by the Board of Directors of Respondent No. 1. Considering the term "settlement" and the provisions of the I.D. Act and the rules framed thereunder, it cannot be said that the same amounts to settlement as the employer was not a party to the understanding, but its officials who had been delegated powers to negotiate on behalf of the Respondent No. 1 subject to the Board of Respondent No. 1 granting sanction to the same. That sanction in terms of the M.O.U. was not given. It is the case of the Petitioners themselves that the Respondent No. 1 have backed out from the consensus arrived at on 22.12.2004. From the letter of 25.1.2005, addressed by the Petitioners to the Chairman of Respondent No. 1, it would be clear, that no settlement has been signed and consequently

the Petitioners demand for ad hoc payment as set out therein is not based on any settlement between the parties. Thus there being no settlement dated 22.12.2004, no relief can be granted on that count. Even otherwise, if it be the case of the Petitioners that in fact the undertaking is a settlement, then the Petitioners will have to take recourse to the mechanism under the I.D. Act for recovery of amount due by following the procedure under the Industrial Disputes Act.

7. The question which arises is whether the settlement entered into between the AIEG and Respondent No. 1 is binding on the Petitioners. The case of the Petitioner is that there is no sole collective bargaining agent as the period for which the AIEG was recognized has come to an end. The settlement entered into by Respondent No. 1, was filed before the Industrial tribunal in a pending Reference between Respondent No. 1 and AIEG. The Petitioners were not summoned to appear in those proceedings. Section 18 of the I.D. Act makes it clear on whom a settlement is binding. If the Petitioners were not parties to the settlement nor were parties to the Industrial Reference nor were given notice by the Industrial Tribunal and if AIEG was not the sole bargaining agent, is it open to the Petitioners to contend that the settlement or award

is not binding upon them. The terms of the reference when the settlement was signed and award passed are not before us. At any rate, we are not called upon to answer the said issue in the absence of necessary parties. Even otherwise, in the absence of all necessary parties before us and considering the forum available under the Industrial Disputes Act, if the settlement is not binding, it is always open to the Petitioners, to raise their charter of demands by following the procedure laid down under the ID Act and on failure by the Management to negotiate, to initiate proceedings in conciliation, before the Conciliation Officer under the I.D. Act. Also if according to Petitioners, the settlement entered into between the Petitioners, AIEG and Respondent No. 1 is unfair and or unreasonable, it is still open to them in Law to dispute the same by raising an appropriate industrial dispute. AIEG is not before us and therefore, it is not open for us to finally decide, as to whether the AIEG is the sole bargaining agent or not and whether the award in terms of the reference is binding on the members of the Petitioner Union. We have proceeded on the footing of the averments made by the Petitioner in this petition.

. The Petitioners if they are not willing to accept

the settlement entered into between, AIEG and Respondent No. 2, and if that settlement is not binding, or applicable to all employees working with Respondent No. 1, it is always open to Petitioners members, to reject the same and return the amount received which according to Petitioners have been forcibly credited to their accounts of the Petitioners members. It is however, not possible for this court as pointed out earlier to issue any direction to the Management of Respondent No. 1 to enforce the purported settlement of 24.12.2004 in the absence of any such settlement. If that be a settlement, Petitioner ought to invoke the mechanism provided under the I.D. Act for recovery of amounts due under the settlement.

8. Having said so, we may now refer to the judgements cited at the bar, on behalf of the Petitioners herein to consider whether they take a view contrary to what we have taken. In The Jhagrakhan Collieries (P) Ltd. Versus G.C. Agrawal Presiding Officer, Central Govt. Indl. Tribunal Cum Labour Court, Jabalpur and Ors. A.I.R. 1975 S.C. 171. The issue was, as to whether the settlement entered into in conciliation can be extended to parties who are not parties to the settlement. The court also held that the settlement not being one arrived at under the conciliation

proceedings, would be enforceable only against the parties thereto.

. In Allahabad Bank Employees Union Versus Allahabad Bank, 2005 II C.L.R. 206 the issue was, that inspite of a settlement, an award came to be passed by the Industrial Tribunal which had the effect on one of the conditions of service in the matter of no transfer of office bearers of union. The union which entered into the settlement was not a party nor notice was given to them. The award was set aside and the matter remanded to the Industrial Tribunal.

. Reference then was made to the judgment of the Supreme Court in Federal Bank Ltd. Versus Sagar Thomas and Others, A.I.R. 2003 SC 4325 and more specifically to Para 26 of the said judgment. The issue therein was, whether the private companies would be amenable to the writ jurisdiction under Article 226 of the Constitution. The Supreme Court held that if enactments fastens certain duties and liabilities statutorily upon the private bodies, which they are bound to comply with and if they violate such statutory provision, a writ would certainly be issued for compliance of those provisions. In the instant case, there was no settlement entered into on 22.10.2004. Even

otherwise, even if there was settlement and Respondent NO. 1 is a "State" or "Other Authority" under the meaning of Article 12 of the Constitution of India, considering that there is a mechanism provided under the I.D.A Act, this court will not ordinarily entertain a writ petition and leave it to the parties to pursue their remedy before the authorities under the Industrial Disputes Act. We are really not concerned with that issue herein.

. As already pointed out, there is no settlement of 22.12.2004 and as such the relief in terms thereof cannot be granted. The issue of directing respondent No. 1 to enter into negotiations with the Petitioners cannot be granted as there are also other unions and on failure by the management to negotiate with the unions, the Industrial Disputes Act, provides effective mechanism for resolving these disputes by taking the matter in conciliation and on failure, if the appropriate Government comes to the conclusion that there is an industrial dispute then it is bound to refer the dispute for Industrial adjudication.

9. For the aforesaid reasons, we find no merit in this petition which is consequently dismissed. Rule discharged. There shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**